

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
National Exchange Carrier Association)	
Payment Formula and Fund Size Estimate)	
Interstate Telecommunications Relay)	CG Docket No. 03-123
Services (TRS) Fund for July 2007 Through)	
June 2008)	

AT&T COMMENTS

Pursuant to the Commission's May 2, 2007 Public Notice (DA 07-1978),¹ AT&T Inc. ("AT&T") submits these comments on the annual payment formula and fund size estimate for the Interstate TRS Fund ("Fund") submitted on May 1, 2007 by the National Exchange Carrier Association ("NECA") in its capacity as the Fund administrator.

INTRODUCTION AND SUMMARY

NECA has proposed several alternative payment formulae for determining reimbursement rates to providers of relay service. Depending on which of these alternatives the Commission adopts, the rates will range from \$1.5601 to \$1.8747 for traditional telecommunications relay service ("TRS"), from \$1.1002 to \$1.2863 for Internet Protocol ("IP") Relay, from \$2.4954 to \$3.4546 for Speech-to-Speech ("STS") service, and from \$4.3480 to \$6.7738 for Video Relay Service ("VRS").²

¹ Public Notice, "National Exchange Carrier Association (NECA) Submits the Payment Formula and Fund Size estimate for the Interstate Telecommunications Relay Service TRS Fund for the July 2007 through June 2008 Fund Year," DA 07-1978 (May 2, 2007), *published at* 72 FR 27570 (May 16, 2007) ("Public Notice").

² Letter dated May 1, 2007 from John Ricker, Director, Universal Service Program Support, NECA, to Marlene H. Dortch, Secretary, FCC re: TRS Fund Administration, ("2007 TRS Fund Estimate"), Exhibits 1-1B, 1-2B, 1-3B and 1-4B. In addition, administrative expenses will increase from \$800,000 to \$1,000,000 and interest on the invested funds for the July 2007 through June 2008 will increase from \$2,800,000 to \$6,000,000.

Concomitantly, the proposed contribution factor will range from \$0.0052 to \$0.0075 with a Fund size requirement ranging from \$397.0 million to \$575.4 million.³

The filing also anticipates that there will be a surplus of approximately \$45 million at the end of the current 2006-2007 funding year.⁴ Section 64.604(c)(5)(iii)(B) of the Commission's rules provides in relevant part:

“In the event that contributions [in the current funding year] exceed TRS payments and administrative costs, the contribution factor for the following year *will* be adjusted by an appropriate amount, taking into consideration projected cost and usage changes.”⁵

However, rather than using part of that surplus to reduce the proposed 2007-2008 Fund requirement, the 2007 TRS Fund Estimate recommends that the *entire* projected Fund surplus of approximately \$45 million be retained “in lieu of adding a safety margin” for the Fund year. As AT&T shows below, in light of past and present circumstances, retention of the entire surplus is both unnecessary and inappropriate.

ARGUMENT

A PORTION OF THE SURPLUS SHOULD BE USED TO REDUCE THE PROPOSED TRS FUNDING PURSUANT TO THE COMMISSION'S RULES.

Developments during the past two funding cycles demonstrate that the 2006-2007 Fund surplus should be applied in part to reduce the 2007-2008 Fund requirement. Specifically, when it addressed the Fund size estimate for the 2005-2006 funding year, the Commission, in an abundance of caution, permitted the Fund administrator to continue use of a 10 percent “safety margin” -- amounting at that time to over \$37 million -- in excess of its computation of the funding requirement based on analysis of

³ *Id.*, page 2.

⁴ *Id.*, page 21.

⁵ 47 C.F.R. § 64.604(c)(5)(iii)(B) (emphasis supplied).

carrier costs and projected demand.⁶ At that time, relay service was in a state of flux, as demand for traditional TRS continued to migrate to newer forms of relay service including IP relay, captioned telephone (“captel”) and Video Relay Service (“VRS”). In that environment, as the Fund administrator itself noted, the limited availability of historical demand data for some of those relay services, and anomalies in historic demand for others, made accurately projecting demand especially difficult.⁷ Against that background, the Commission agreed with the Fund administrator that reliance on a safety margin was “prudent” and “reasonable.”⁸

Whatever the merits of the Commission’s determination at that time, retention of a safety margin now clearly is no longer appropriate. At the end of the funding year for which the Commission reached its decision described above, the Fund administrator reported a projected TRS Fund surplus of approximately \$64 million.⁹ At that time, the Fund administrator applied \$40 million of that surplus to offsetting the 2006 to 2007 TRS funding requirement. The remaining \$24 million of the projected surplus was retained in lieu of adding a safety margin to the proposed fund requirement.

Just as in its present filing, the Fund administrator stated then that this amount would protect the fund “in the event that actual minute growth exceeds forecast levels, or if the contribution base in July, at the time of carrier billing, turns out to be less than the April base used to calculate the contribution factor.”¹⁰ However, the current Fund estimate does not identify any specific concerns that appear to justify retaining this safety

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 20 FCC Rcd 12,237, 12,250 (2005) (¶ 34).

⁷ *Id.* at 12,249 (¶¶ 31-33).

⁸ *Id.* (¶¶ 32-33).

⁹ Letter dated May 1, 2006 from John Ricker, Director, Universal Service Program Support, NECA, to Marlene H. Dortch, Secretary, FCC re: TRS Fund Administration (“2006 TRS Fund Estimate”), page 20.

¹⁰ Compare *id.* page 20 with 2007 TRS Fund Estimate, page 21.

margin. To the contrary, the filing cites an ongoing *decline* in traditional TRS demand, and reports modest growth in STS and IP relay.¹¹ It also notes that since 2005 the Fund administrator has adopted a new, more accurate demand growth methodology.¹² Finally, the Commission is continuing its aggressive oversight and outreach program to control misuse of IP relay by some end users without disabilities that has been a causal factor in the demand growth for that service.¹³

As the Court of Appeals has pointed out,¹⁴ the Commission may exercise “predictive judgment” in fashioning policies to serve the public interest, but to satisfy its obligation to practice reasoned decisionmaking the agency also has a duty to reexamine such predictions in light of subsequent events. Based on the current Fund results, it is apparent the \$24 million “safety margin” retained in 2006-2007 was unneeded to protect the Fund against unforeseen hardship. Additionally, rather than diminishing, the surplus amount has once more grown substantially.

On this record, there is no demonstrable need to retain the entire current surplus. Moreover, failure to apply a portion of the current surplus to reduce the 2007-2008 Fund contribution factor will seriously prejudice Fund contributors that, as a result, overpay during the current funding period. This is because, even if a reduction in the contribution factor to reflect that surplus is made at some future date, such contributors will not be made whole if changes in the interim in the overall telecommunications

¹¹ See 2007 TRS Fund Estimate, pages 14, 18-21.

¹² *Id.* at 13.

¹³ See, e.g., Public Notice “FCC Alerts Public and Merchants of Fraudulent Credit Card Purchases through Internet Protocol (IP) Relay Service, a Form of Telecommunications Relay Services (TRS),” DA 07-2006 (May 4, 2007), *published at* 72 FR 27569 (May 16, 2007).

¹⁴ See *Cellnet Communications, Inc. v FCC*, 149 F.3d 429, 441 (D.C. Cir. 1998); *Aeronautical Radio, Inc. v FCC*, 928 F.2d 428, 445 (D.C. Cir. 1991).

marketplace reduce their base revenues below the level subject to an overstated contribution factor in the present year.

CONCLUSION

For the reasons stated above, AT&T requests that, at a minimum, \$25 million of the projected \$45 million surplus in the Fund for 2006-2007 be applied to offset the 2007-2008 TRS funding requirement.

Respectfully submitted,

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